IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 209 of 2006 (O&M)
Date of Decision: August 20, 2013

M/s GE Power Controls India Pvt. Ltd.

... Petitioner

Versus

M/s Ravi Trading Company

... Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1) Whether Reporters of the local papers may be allowed to see the judgment?

2) To be referred to the Reporters or not?

3) Whether the judgment should be reported in the Digest?

Present: Mr. Rohit Chandel, Advocate,
for Mr.Rohit Khanna, Advocate,
for the petitioner.

Mr. Rajiv Sharma, Advocate,
for the respondent.

Paramjeet Singh, J.

Instant revision petition has been filed under Article 227 of the Constitution of India read with Section 115 and 151 C.P.C. for setting aside the impugned order dated 07.12.2005 passed by learned Civil Judge (Junior Division), Gurgaon, whereby application filed by the petitioner under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act") has been dismissed.

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Brief facts of the case are that respondent/plaintiff firm is authorised distributor and stockist of L&T Switchgears, Dowell's/Hex Lugs, Haager MCB's and Control Panels etc. Opposite Civil Hospital, Gurgaon. The respondent firm was appointed as authorized Channel Partner for low voltage components of the petitioner/defendant for the year 2004 and since then the respondent has been doing regular business with the petitioner by making advance payments and also tendering Advance C-Form against all the invoices made so far. On 20.04.2005, Mr. Manoj Sharma, Regional Manager Distributor of the petitioner called Sh. Raj Kumar Mangla, Authorized signatory of the respondent firm and told him that the petitioner will not do further business with the respondent without assigning any reason or without having any prior discussion with the plaintiff. On 10.05.2005, the respondent wrote a letter to the petitioner objecting to the withdrawal of the dealership/channel partner of low voltage components of the respondent by the petitioner without any justifiable reasons and also wrote another letter dated 13.05.2005 asking the petitioner to book and include the order also in pending orders list and execute the orders without any further delay. Thereafter, respondent – plaintiff filed a suit for declaration against the petitioner-defendant to the effect that withdrawal of dealership/channel partner of the plaintiff by the defendants is illegal, void, arbitrary and unforceable and for permanent injunction restraining the defendants from enforcing the withdrawal decision of the channel partner of the plaintiff. Petitioner-defendant filed an application under Section 8 of the Act for referring the matter to the

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arbitrator in view of clause 12.1 of the agreement. Vide order dated 07.12.2005, learned Civil Judge (Junior Division) Gurgaon dismissed the application. Hence, this revision petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner contended that the contract was terminated on 31.12.2004. The dispute or difference for determination had arisen out of the agreement, and, therefore, dispute or difference between the parties was required to be settled by the arbitrator in view of the clause 12.1. Clause 12 of the agreement reads as under:-

> *"12. **Governing law and Arbitration**.*
> *12.1 This agreement shall be governed by the laws of India. All and any disputes and claims arising out of or relating in any manner to this Agreement or the breach, termination, non-performance, interpretation or validity thereof, shall at the request of either party, be submitted to, and be settled by arbitration at Bangalore, under and in accordance with the Arbitration and Conciliation Act, 1996.*
> *12.2 Nothing contained in this clause will preclude either party from applying for and obtaining any injunctive, prohibitory or to her similar urgent or interim relief from a competent court of law, for which and with respect to any matters pertaining to arbitration, the Courts of law in Bangalore will have exclusive jurisdiction."*

Learned counsel for the petitioner further contended that since there is an arbitration clause in the agreement dated 09.08.2004, the jurisdiction of civil courts is barred. Even otherwise the Civil Court at

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Gurgaon has no jurisdiction to try and entertain the present suit because of lack of territorial jurisdiction. Learned counsel for the petitioner has placed reliance upon a judgment of Hon'ble Supreme Court in ***The Branch Manager, M/s Magma Leasing & Finance Limited and another vs. Potluri Madhavilata and another, 2009(4) R.C.R. (Civil) 900*** and a judgment of this Court in ***Bharat Petroleum Corporation Limited vs. Prem Chand, 2001(3) R.C.R. (Civil) 80.***

Learned counsel for the respondent has opposed the contentions raised by the learned counsel for the petitioner and contended that the agreement having been terminated, the agreement does not survive and the matter need not be referred to the arbitration. Learned counsel further contended that the alleged agreement dated 09.08.2004 was executed, signed and accepted by the respondent at Gurgaon, so the Civil Courts at Gurgaon have the jurisdiction to try and entertain the present case.

I have considered the rival contentions raised by the learned counsel for the parties.

Hon'ble Supreme Court in ***The Branch Manager, M/s Magma Leasing & Finance Limited's case (supra)*** has held as under:-

> *"18. The statement of law expounded by Viscount Simon, L.C. in the case of Heyman as noticed above, in our view, equally applies to situation where the contract is terminated by one party on account of the breach committed by the other particularly in a case where the clause is framed in wide and general terms. Merely because the contract has come to an*

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end by its termination due to breach, the arbitration clause does not get perished nor rendered inoperative; rather it survives for resolution of disputes arising "in respect of" or "with regard to" or "under" the contract. This is in line with the earlier decisions of this Court, particularly as laid down in Kishori Lal Gupta & Bros.

19. In the instant case, clause 22 of the hire purchase agreement that provides for arbitration has been couched in widest possible terms as can well be imagined. It embraces all disputes, differences, claims and questions between the parties arising out of the said agreement or in any way relating thereto. The hire purchase agreement having been admittedly entered into between the parties and the disputes and differences have since arisen between them, we hold, as it must be, that the arbitration clause 22 survives for the purpose of their resolution although the contract has come to an end on account of its termination."

20. The next question, an incidental one, that arises for consideration is whether the trial Court must refer the parties to arbitration under Section 8 of the Act. Section 8 of the Act, 1996.

21. Section 8 reads thus:-

> *"8. Power to refer parties to arbitration where there is an arbitration agreement – (1) A judicial authority before which an action is brought in a matter which is the subject of an arbitrator agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.*
>
> *(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the*

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original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

22. An analysis of Section 8 would show that for its applicability, the following conditions must be satisfied: (a) that there exists an arbitration agreement; (b) that action has been brought to the court by one party to the arbitration agreement against the other party; (c) that the subject matter of the suit is same as the subject matter of the arbitration agreement; (d) that the other party before he submits his first statement of the substance of the dispute, moves the court for referring the parties to arbitration; and (e) that along with the application the other party tenders the original arbitration agreement or duly certified copy thereof.

23. Section 8 is in the form of legislative command to the court and once the pre-requisite conditions as aforestated are satisfied, the court must refer the parties to arbitration. As a matter of fact, on fulfillment of conditions of Section 8, no option is left to the court and the court has to refer the parties to arbitration."

Admitted the present dispute arises out of the terms of agreement wherein arbitration clause is specifically incorporated. Although contract stands terminated on account of breach committed by the party. Merely due to termination of arbitration agreement, the arbitration clause does not get perished nor rendered inoperative. This

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clause survives for adjudication of dispute arising from the contract.

In the light of the above, instant revision petition is allowed and the impugned order is set aside. The matter is ordered to be referred to the arbitrator in view of clause 12.1 of the agreement.

August 20, 2013 **[Paramjeet Singh]**
vkd **Judge**

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